

REMARKS

In the action of March 2, 2004, the examiner objected to the specification, indicating that the continuing data of the application needed to be updated; rejected claim 3 under 35 U.S.C. 101 as claiming the same invention as claim 1 of prior patent No. 6,644,878; rejected claims 1, 2 and 5 under obviousness-type double patenting relative to claim 1 of U.S. Patent No. 6,644,878; rejected claims 1-5 under obviousness-type double patenting relative to claims 1, 5, 6, 8 and 11 of U.S. Patent No. 6,402,410; rejected claims 1, 2 and 5 under 35 U.S.C. 103 as unpatentable over Giuliani (5,309,590); and rejected claim 4 under 35 U.S.C. 103 as unpatentable over '590 Giuliani in view of English *et al.*

The purpose of this amendment is to place the application in better condition for appeal by resolving as many issues set forth in the examiner's action as possible.

Please note the proposed amendment to the Disclosure providing the requested continuing data. Approval of the amendment is respectfully requested.

Please also note that claim 3 has been cancelled. Accordingly, the rejection of claim 3 is moot.

Applicants' enclose a Terminal Disclaimer relative to U.S. Patent No. 6,644,878. Withdrawal of the obviousness-type double patenting rejection of claims 1, 2 and 5 relative to claim 1 of that patent is therefore respectfully requested.

Applicants traverse the examiner's rejection of claims 1-5 under obviousness-type double patenting relative to claims 1, 5, 6, 8 and 11 of U.S. Patent No. 6,402,410. The limitations in applicants' claims, specifically that the reservoir has a fluid volume capacity of a single unit of use, with a maximum of 4 mL, patentably distinguishes applicants' claims relative to the claims of the '410 patent. The reasons coincide with the reasons in favor of patentability relative to '590 Giuliani *et al.*

With respect to the rejection of claims 1, 2 and 5 relative to '590 Giuliani *et al.*, the examiner acknowledges that the reference is silent to the size of the reservoir. It is applicants' position that it would not have been obvious to one of ordinary skill in the art at the time the invention was made that the reservoir could be designed to have the specified volume, *i.e.* a single unit-of-use with a maximum of 4 mL. The reasons for

applicants' position are set forth in detail in the prior application, and in particular, the amendment of March 3, 2003 in the '122 application. Allowance of the application is respectfully requested. Alternatively, withdrawal of the objection to the specification and withdrawal of the rejection of claim 3 and claims 1, 2 and 5 under obviousness-type double patenting (relative to Patent No. 6,644,878) is respectfully requested so that an appeal can be pursued on the remaining issues.

The Commissioner is authorized to charge any deficiency or credit any over payment to Deposit Account 07-1900.

Respectfully submitted,
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Enclosures: Terminal Disclaimer, Postcard